

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

ALASKA LABORERS  
EMPLOYERS RETIREMENT  
FUND,  
Plaintiff,

v.

MAYS ET AL.,  
Defendants.

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No. SA-07-CV-00042-WRF

FILED

AUG 27 2008

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY DEPUTY CLERK

**ORDER DENYING DEFENDANT'S MOTION TO DISMISS WITHOUT  
PREJUDICE**

BEFORE THE COURT are Defendant's Motion to Dismiss (Docket No. 113), filed September 24, 2007; Plaintiff's Response (Docket No. 125), filed November 5, 2007; and Defendant's Reply (Docket No. 129), filed November 26, 2007. The Court had a hearing on this matter on August 26, 2008. After careful consideration of the representations made by Plaintiffs, the Court is of the opinion that Defendant's Motion to Dismiss (Docket No. 113) should be DENIED WITHOUT PREJUDICE.

Plaintiff represented to the Court that it will be seeking dismissal of this case after the issue of Plaintiff's legal fees is resolved. Plaintiff contends that legal fees are appropriate, in part, because it feels the underlying litigation caused material change in the transaction at issue. Accordingly, the Court will address whether legal fees are appropriate and will do so

under the legal standard set forth in cases such as *O'Neill v. Church's Fried Chicken*, 910 F.2d 264 (5th Cir. 1990). Thus, the Court is of the opinion that Defendant's Motion to Dismiss should be denied at this time.

For the reasons stated above, Defendant's Motion to Dismiss (Docket No. 113) is DENIED WITHOUT PREJUDICE.

It is so ORDERED.

Signed this 27<sup>th</sup> day of August, 2008.

  
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ROYAL FURGESON  
UNITED STATES DISTRICT JUDGE